

AMENDED IN ASSEMBLY APRIL 12, 2005

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 858

Introduced by Assembly Member Bass

February 18, 2005

An act to amend ~~Section 11999.5 of the Health and Safety Code~~ Sections 11999.5, 11999.9, 11999.10, and 11999.12 of the Health and Safety Code, and Sections 1210, 1210.1, and 3063.1 of, the Penal Code, relating to substance abuse and crime prevention, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 858, as amended, Bass. Substance abuse and crime prevention: funding.

The

(1) *The Substance Abuse and Crime Prevention Act of 2000, enacted by initiative statute (Proposition 36), established the Substance Abuse Treatment Trust Fund within the State Treasury to be continuously appropriated for carrying out the purposes of the act relating to diverting from incarceration into community-based substance abuse treatment programs nonviolent defendants, probationers, and parolees charged with simple drug possession or drug use offenses.* The act requires \$120,000,000 to be continuously appropriated from the General Fund to the Substance Abuse Treatment Trust Fund for the 2001-02 fiscal year, and an additional sum of \$120,000,000 for each subsequent fiscal year, concluding with the 2005-06 fiscal year. The act provides that the Legislature is not precluded from making additional appropriations to the fund. The act requires that any amendment to the act pass with a $\frac{2}{3}$ vote of the

membership of both houses of the Legislature and requires amendments to be consistent with the act's purposes.

This bill would remove the 2005-06 concluding fiscal year reference and would instead require \$120,000,000 to be continuously appropriated from the General Fund to the Substance Abuse Treatment Trust Fund for an unlimited number of fiscal years.

(2) The act requires the State Department of Alcohol and Drug Programs to annually conduct a study to evaluate the effectiveness and financial impact of the programs that are funded pursuant to the requirements of the act.

This bill would change the required components of that annual study and would additionally require the department to conduct 2 3-year follow-up studies to be submitted to ____ by July 1, 2010, and July 1, 2013.

(3) The act requires the department to allocate up to 0.5% of the fund's total moneys each year for a long-term study to be conducted by a public university in California aimed at evaluating the effectiveness and financial impact of the programs that are funded pursuant to the requirements of the act.

This bill would instead require the department to allocate up to 0.5% of the fund's total moneys each year for the studies described in (2).

(4) The act requires the department to annually audit the expenditures made by any county that is funded, in whole or in part, with funds provided by the act and requires counties to repay any funds that are not spent in accordance with the requirements of the act.

This bill would instead require the department to conduct only periodic audits. When a county is required to repay funds, the bill would authorize the county to repay those funds with trust fund moneys previously or presently allocated to the county under the act, or would authorize the department to require a corrective action by the county, instead of repayment of the funds.

(5) The act defines "drug treatment program" or "drug treatment" and "successful completion of treatment."

This bill would revise those definitions.

(6) The act requires any person convicted of a nonviolent drug possession offense, with certain exceptions, to receive probation with required participation in, and completion of, an appropriate drug treatment program.

This bill would require the court to impose appropriate drug testing as a condition of probation. The bill would also require the court, to the greatest extent possible, to monitor any person convicted of, and receiving probation for, a nonviolent drug possession offense. The bill would add to and revise the list of persons to whom these provisions do not apply.

(7) The act requires a drug treatment provider, on a quarterly basis after the defendant begins the drug treatment program, to prepare and forward a progress report on the individual probationer to the probation department, and to notify the probation department of other conditions related to the parolee's drug treatment.

This bill would instead require the reports to be provided to the court, rather than to the probation department. The bill would also require the drug treatment provider to notify the court, in addition to the probation department, of other conditions related to the parolee's drug treatment.

(8) The act prohibits drug treatment services required as a condition of probation from exceeding 12 months, but authorizes additional aftercare services as a condition of probation to be required for up to 6 months.

This bill would eliminate that authorization and would instead provide an exception to the 12-month limitation if the court makes a finding that the continuation of treatment beyond 12 months is necessary for drug treatment to be successful. In that case, the bill would authorize the court to order up to 2 6-month extensions of treatment services.

(9) The act requires and authorizes the Parole Authority to make certain parole decisions related to a parolee's drug treatment services and parole violation and revocation.

This bill would shift those requirements and authorizations from the Parole Authority to the Department of Corrections Parole Division.

(10) The bill would make its provisions operative on July 1, 2006, and would require its provisions to be applied prospectively.

*Vote: 2/3. Appropriation: yes. Fiscal committee: yes.
State-mandated local program: no.*

The people of the State of California do enact as follows:

1 SECTION 1. Section 11999.5 of the Health and Safety Code
2 is amended to read:

1 11999.5. Funding Appropriation

2 Upon passage of this act, \$60,000,000 shall be continuously
3 appropriated from the General Fund to the Substance Abuse
4 Treatment Trust Fund for the 2000–01 fiscal year. There is
5 hereby continuously appropriated from the General Fund to the
6 Substance Abuse Treatment Trust Fund an additional
7 \$120,000,000 for the 2001–02 fiscal year, and an additional sum
8 of \$120,000,000 for each subsequent fiscal year. These funds
9 shall be transferred to the Substance Abuse Treatment Trust Fund
10 on July 1 of each of these specified fiscal years. Funds
11 transferred to the Substance Abuse Treatment Trust Fund are not
12 subject to annual appropriation by the Legislature and may be
13 used without a time limit. Nothing in this section precludes
14 additional appropriations by the Legislature to the Substance
15 Abuse Treatment Trust Fund.

16 *SEC. 2. Section 11999.9 of the Health and Safety Code is*
17 *amended to read:*

18 11999.9. Annual Evaluation Process

19 The department shall ~~annually conduct a study~~ *two three-year*
20 *follow-up studies* to evaluate the effectiveness and financial
21 impact of the programs that are funded pursuant to the
22 requirements of this act, *and submit those evaluations to the*
23 *Legislature not later than July 1, 2010, and July 1, 2013.* The
24 ~~study evaluation studies~~ shall include, but not be limited to, ~~a~~
25 ~~study of the implementation process, a review of lower~~
26 ~~incarceration costs, reductions in crime, reduced prison and jail~~
27 ~~construction, reduced welfare costs, the adequacy of funds~~
28 ~~appropriated, and any other impacts or issues the department can~~
29 ~~identify.~~ *(a) criminal justice measures on rearrests, jail and*
30 *prison days averted, crime trends, and (b) treatment measures on*
31 *completion rates and quality of life indicators, such as alcohol*
32 *and drug use, employment, health, mental health, and family and*
33 *social supports.*

34 *In addition to the studies to evaluate the effectiveness and*
35 *financial impact of the programs that are funded pursuant to the*
36 *requirements of this act, the department shall produce an annual*
37 *report detailing the number and characteristics of participants*
38 *served as a result of this act and the related costs.*

39 *SEC. 3. Section 11999.10 of the Health and Safety Code is*
40 *amended to read:*

11999.10. Outside Evaluation Process

The department shall allocate up to 0.5 percent of the fund's total ~~monies~~ *moneys* each year ~~for a long-term study to be conducted by a public university in California aimed at evaluating the effectiveness and financial impact of the programs that are funded pursuant to the requirements of this act to fund the costs of the studies required in Section 11999.9 by a public or private university or other public or private institution with similar research qualifications.~~

SEC. 4. Section 11999.12 of the Health and Safety Code is amended to read:

11999.12. Audit of Expenditures

The department shall ~~annually audit~~ *conduct periodic audits of* the expenditures made by any county that is funded, in whole or in part, with funds provided by this act. Counties shall repay to the department any funds that are not spent in accordance with the requirements of this act. *In making repayment, a county may use trust fund moneys previously or presently allocated to the county under this act, or the department may require a corrective action by the county in the place of repayment, as determined by the department.*

SEC. 5. Section 1210 of the Penal Code is amended to read:

1210. Definitions

As used in Sections 1210.1 and 3063.1 of this code, and Division 10.8 (commencing with Section 11999.4) of the Health and Safety Code:

(a) The term "nonviolent drug possession offense" means the unlawful personal use, possession for personal use, or transportation for personal use of any controlled substance identified in Section 11054, 11055, 11056, 11057 or 11058 of the Health and Safety Code, or the offense of being under the influence of a controlled substance in violation of Section 11550 of the Health and Safety Code. The term "nonviolent drug possession offense" does not include the possession for sale, production, or manufacturing of any controlled substance and does not include violations of Section 4573.6 or 4573.8.

(b) The term "drug treatment program" or "drug treatment" means a state licensed and/or certified community drug treatment program, which may include one or more of the following: ~~outpatient treatment, half-way house treatment, narcotic~~

1 ~~replacement therapy, drug education or prevention courses and/or~~
2 ~~limited inpatient or residential drug treatment as needed to~~
3 ~~address special detoxification or relapse situations or severe~~
4 ~~dependence (1) drug education, (2) outpatient services, (3)~~
5 ~~narcotic replacement therapy, (4) residential treatment, (5)~~
6 ~~detoxification services, and (6) aftercare services.~~ The term
7 “drug treatment program” or “drug treatment” includes a drug
8 treatment program operated under the direction of the Veterans
9 Health Administration of the Department of Veterans Affairs or
10 a program specified in Section 8001; such a program shall be
11 eligible to provide drug treatment services without regard to the
12 licensing or certification provisions required by this subdivision.
13 The term “drug treatment program” or “drug treatment” does not
14 include drug treatment programs offered in a prison or jail
15 facility.

16 (c) The term “successful completion of treatment” means that
17 a defendant who has had drug treatment imposed as a condition
18 of probation has completed the prescribed course of drug
19 treatment and, ~~as a result, there is reasonable cause to believe that~~
20 ~~the defendant will not abuse controlled substances in the future~~
21 *has continued thereafter to refrain from the use of drugs during*
22 *the period of probation. Completion of treatment shall not*
23 *require cessation of narcotic replacement therapy.*

24 (d) The term “misdemeanor not related to the use of drugs”
25 means a misdemeanor that does not involve (1) the simple
26 possession or use of drugs or drug paraphernalia, being present
27 where drugs are used, or failure to register as a drug offender, or
28 (2) any activity similar to those listed in paragraph (1).

29 *SEC. 6. Section 1210.1 of the Penal Code is amended to*
30 *read:*

31 1210.1. Possession of Controlled Substances; Probation;
32 Exceptions

33 (a) Notwithstanding any other provision of law, and except as
34 provided in subdivision (b), any person convicted of a nonviolent
35 drug possession offense shall receive probation. As a condition
36 of probation the court shall require participation in and
37 completion of an appropriate drug treatment program. *The court*
38 *shall impose appropriate drug testing as a condition of*
39 *probation.* The court may also impose, as a condition of
40 probation, participation in vocational training, family counseling,

1 literacy training and/or community service. A court may not
2 impose incarceration as an additional condition of probation.
3 Aside from the limitations imposed in this subdivision, the trial
4 court is not otherwise limited in the type of probation conditions
5 it may impose. Probation shall be imposed by suspending the
6 imposition of sentence. *No person shall be denied the*
7 *opportunity to benefit from the provisions of the act based solely*
8 *upon evidence of a co-occurring psychiatric or developmental*
9 *disorder.*

10 *To the greatest extent possible, any person convicted of, and*
11 *receiving probation for, a nonviolent drug possession offense*
12 *under this section shall be monitored by the court through the*
13 *use of dedicated calendars and the incorporation of a*
14 *collaborative model that includes close collaboration with*
15 *treatment providers and probation officers, drug testing*
16 *commensurate with treatment needs, and supervision of progress*
17 *through review hearings.*

18 In addition to any fine assessed under other provisions of law,
19 the trial judge may require any person convicted of a nonviolent
20 drug possession offense who is reasonably able to do so to
21 contribute to the cost of his or her own placement in a drug
22 treatment program.

23 (b) Subdivision (a) ~~does~~ *shall* not apply to ~~either~~ *any* of the
24 following:

25 (1) Any defendant who previously has been convicted of one
26 or more serious or violent felonies in violation of subdivision (c)
27 of Section 667.5 or Section 1192.7, unless the nonviolent drug
28 possession offense occurred after a period of five years in which
29 the defendant remained free of both prison custody and the
30 commission of an offense that results in (A) a felony conviction
31 other than a nonviolent drug possession offense, or (B) a
32 misdemeanor conviction involving physical injury or the threat
33 of physical injury to another person.

34 (2) Any defendant who *has previously served three separate*
35 *prison terms for non-drug-related felonies within the meaning of*
36 *subdivision (b) of Section 667.5, unless the court finds that the*
37 *defendant does not pose a risk to the community and would*
38 *benefit from a drug treatment program.*

39 (3) *Any defendant who*, in addition to one or more nonviolent
40 drug possession offenses, has been convicted in the same

1 proceeding of a misdemeanor not related to the use of drugs or
2 any felony.

3 ~~(3)–~~

4 (4) Any defendant who:

5 (A) While ~~using a firearm~~ *armed with a deadly weapon with*
6 *the intent to use the same as a deadly weapon*, unlawfully
7 possesses any ~~amount of (i) a substance containing either cocaine~~
8 ~~base, cocaine, heroin, methamphetamine, or (ii) a liquid,~~
9 ~~nonliquid, plant substance, or hand-rolled cigarette, containing~~
10 ~~phenylelidine~~ *controlled substance identified in Section 11054,*
11 *11055, 11056, 11057, or 11058 of the Health and Safety Code.*

12 (B) While ~~using a firearm~~ *armed with a deadly weapon with*
13 *the intent to use the same as a deadly weapon*, is unlawfully
14 under the influence of ~~cocaine base, cocaine, heroin,~~
15 ~~methamphetamine or phenylelidine~~ *a controlled substance*
16 *identified in Section 11054, 11055, 11056, 11057, or 11058 of*
17 *the Health and Safety Code.*

18 ~~(4)–~~

19 (5) Any defendant who refuses drug treatment as a condition
20 of probation.

21 ~~(5)–~~

22 (6) Any defendant who (A) has two separate convictions for
23 nonviolent drug possession offenses, (B) has participated in two
24 separate courses of drug treatment pursuant to subdivision (a),
25 and (C) is found by the court, by clear and convincing evidence,
26 to be unamenable to any and all forms of available drug
27 treatment, *as defined in subdivision (b) of Section 1210.*
28 Notwithstanding any other provision of law, the trial court shall
29 sentence such defendants to 30 days in jail.

30 (c) Within seven days of an order imposing probation under
31 subdivision (a), the probation department shall notify the drug
32 treatment provider designated to provide drug treatment under
33 subdivision (a). Within 30 days of receiving that notice, the
34 treatment provider shall prepare a treatment plan and forward it
35 to the probation department. ~~On a quarterly basis after the~~
36 ~~defendant begins the drug treatment program, the treatment~~
37 ~~provider shall prepare and forward a progress report on the~~
38 ~~individual probationer to the probation department. for~~
39 ~~distribution to the court and counsel. The treatment provider~~
40 ~~shall provide to the probation department standardized treatment~~

1 *progress reports with minimum data elements as determined by*
2 *the department, including drug test results. At a minimum, the*
3 *reports shall be provided to the court every 90 days, or more*
4 *frequently, as the court directs.*

5 (1) If at any point during the course of drug treatment the
6 treatment provider notifies the probation department *and the*
7 *court* that the defendant is unamenable to the drug treatment
8 being provided, but may be amenable to other drug treatments or
9 related programs, the probation department may move the court
10 to modify the terms of probation, *or on its own motion, the court*
11 *may modify the terms of probation after a hearing* to ensure that
12 the defendant receives the alternative drug treatment or program.

13 (2) If at any point during the course of drug treatment the
14 treatment provider notifies the probation department *and the*
15 *court* that the defendant is unamenable to the drug treatment
16 provided and all other forms of drug treatment programs pursuant
17 to subdivision (b) of Section 1210, the probation department may
18 move to revoke probation. At the revocation hearing, if it is
19 proved that the defendant is unamenable to all drug treatment
20 programs pursuant to subdivision (b) of Section 1210, the court
21 may revoke probation.

22 (3) Drug treatment services provided by subdivision (a) as a
23 required condition of probation may not exceed 12 months,
24 ~~provided, however, that additional aftercare services as a~~
25 ~~condition of probation may be required for up to six months.~~
26 *unless the court makes a finding supported by the record, that the*
27 *continuation of treatment services beyond 12 months is necessary*
28 *for drug treatment to be successful. If such a finding is made, the*
29 *court may order up to two six-month extensions of treatment*
30 *services. The provision of treatment services under this act shall*
31 *not exceed 24 months.*

32 (d) Dismissal of charges upon successful completion of drug
33 treatment

34 ~~(1) At any time after completion of drug treatment, a~~
35 ~~defendant may petition the sentencing court for dismissal of the~~
36 ~~charges. If~~ *After completion of drug treatment and the terms of*
37 *probation, the court shall conduct a hearing, and if the court*
38 *finds that the defendant successfully completed drug treatment,*
39 *and substantially complied with the conditions of probation, the*
40 *conviction on which the probation was based shall be set aside*

1 and the court shall dismiss the indictment, complaint, or
2 information against the defendant. In addition, except as
3 provided in paragraphs (2) and (3), both the arrest and the
4 conviction shall be deemed never to have occurred. *The*
5 *defendant may additionally petition the court for a dismissal of*
6 *charges at any time after completion of the prescribed course of*
7 *drug treatment.* Except as provided in paragraph (2) or (3), the
8 defendant shall thereafter be released from all penalties and
9 disabilities resulting from the offense of which he or she has been
10 convicted.

11 (2) Dismissal of an indictment, complaint, or information
12 pursuant to paragraph (1) does not permit a person to own,
13 possess, or have in his or her custody or control any firearm
14 capable of being concealed upon the person or prevent his or her
15 conviction under Section 12021.

16 (3) Except as provided below, after an indictment, complaint,
17 or information is dismissed pursuant to paragraph (1), the
18 defendant may indicate in response to any question concerning
19 his or her prior criminal record that he or she was not arrested or
20 convicted for the offense. Except as provided below, a record
21 pertaining to an arrest or conviction resulting in successful
22 completion of a drug treatment program under this section may
23 not, without the defendant's consent, be used in any way that
24 could result in the denial of any employment, benefit, license, or
25 certificate.

26 Regardless of his or her successful completion of drug
27 treatment, the arrest and conviction on which the probation was
28 based may be recorded by the Department of Justice and
29 disclosed in response to any peace officer application request or
30 any law enforcement inquiry. Dismissal of an information,
31 complaint, or indictment under this section does not relieve a
32 defendant of the obligation to disclose the arrest and conviction
33 in response to any direct question contained in any questionnaire
34 or application for public office, for a position as a peace officer
35 as defined in Section 830, for licensure by any state or local
36 agency, for contracting with the California State Lottery, or for
37 purposes of serving on a jury.

38 (e) Violation of probation

39 (1) If probation is revoked pursuant to the provisions of this
40 subdivision, the defendant may be incarcerated pursuant to

1 otherwise applicable law without regard to the provisions of this
2 section.

3 (2) Non-drug-related probation violations

4 If a defendant receives probation under subdivision (a), and
5 violates that probation either by being arrested for an offense that
6 is not a nonviolent drug possession offense, or by violating a
7 non-drug-related condition of probation, and the state moves to
8 revoke probation, the court shall conduct a hearing to determine
9 whether probation shall be revoked. The court may modify or
10 revoke probation if the alleged violation is proved.

11 (3) Drug-related probation violations

12 (A) If a defendant receives probation under subdivision (a),
13 and violates that probation either by committing a nonviolent
14 drug possession offense, or a misdemeanor for simple possession
15 or use of drugs or drug paraphernalia, being present where drugs
16 are used, or failure to register as a drug offender, or any activity
17 similar to those listed in paragraph (1) of subdivision (d) of
18 Section 1210, or by violating a drug-related condition of
19 probation, and the state moves to revoke probation, the court
20 shall conduct a hearing to determine whether probation shall be
21 revoked. The trial court shall revoke probation if the alleged
22 probation violation is proved and the state proves by a
23 preponderance of the evidence that the defendant poses a danger
24 to the safety of others. If the court does not revoke probation, it
25 may intensify or alter the drug treatment plan.

26 (B) If a defendant receives probation under subdivision (a),
27 and for the second time violates that probation either by
28 committing a nonviolent drug possession offense, or a
29 misdemeanor for simple possession or use of drugs or drug
30 paraphernalia, being present where drugs are used, or failure to
31 register as a drug offender, or any activity similar to those listed
32 in paragraph (1) of subdivision (d) of Section 1210, or by
33 violating a drug-related condition of probation, and the state
34 moves for a second time to revoke probation, the court shall
35 conduct a hearing to determine whether probation shall be
36 revoked. The trial court shall revoke probation if the alleged
37 probation violation is proved and the state proves by a
38 preponderance of the evidence either that the defendant poses a
39 danger to the safety of others or is unamenable to drug treatment.
40 In determining whether a defendant is unamenable to drug

1 treatment, the court may consider, to the extent relevant, whether
2 the defendant (i) has committed a serious violation of rules at the
3 drug treatment program, (ii) has repeatedly committed violations
4 of program rules that inhibit the defendant's ability to function in
5 the program, or (iii) has continually refused to participate in the
6 program or asked to be removed from the program. If the court
7 does not revoke probation, it may intensify or alter the drug
8 treatment plan.

9 (C) If a defendant receives probation under subdivision (a),
10 and for the third time violates that probation either by
11 committing a nonviolent drug possession offense, or by violating
12 a drug-related condition of probation, and the state moves for a
13 third time to revoke probation, the court shall conduct a hearing
14 to determine whether probation shall be revoked. If the alleged
15 probation violation is proved, the defendant is not eligible for
16 continued probation under subdivision (a).

17 (D) If a defendant on probation at the effective date of this act
18 for a nonviolent drug possession offense violates that probation
19 either by being arrested for a nonviolent drug possession offense,
20 or a misdemeanor for simple possession or use of drugs or drug
21 paraphernalia, being present where drugs are used, or failure to
22 register as a drug offender, or any activity similar to those listed
23 in paragraph (1) of subdivision (d) of Section 1210, or by
24 violating a drug-related condition of probation, and the state
25 moves to revoke probation, the court shall conduct a hearing to
26 determine whether probation shall be revoked. The trial court
27 shall revoke probation if the alleged probation violation is proved
28 and the state proves by a preponderance of the evidence that the
29 defendant poses a danger to the safety of others. If the court does
30 not revoke probation, it may modify probation and impose as an
31 additional condition participation in a drug treatment program.

32 (E) If a defendant on probation at the effective date of this act
33 for a nonviolent drug possession offense violates that probation a
34 second time either by being arrested for a nonviolent drug
35 possession offense, or a misdemeanor for simple possession or
36 use of drugs or drug paraphernalia, being present where drugs are
37 used, or failure to register as a drug offender, or any activity
38 similar to those listed in paragraph (1) of subdivision (d) of
39 Section 1210, or by violating a drug-related condition of
40 probation, and the state moves for a second time to revoke

1 probation, the court shall conduct a hearing to determine whether
2 probation shall be revoked. The trial court shall revoke probation
3 if the alleged probation violation is proved and the state proves
4 by a preponderance of the evidence either that the defendant
5 poses a danger to the safety of others or that the defendant is
6 unamenable to drug treatment. If the court does not revoke
7 probation, it may modify probation and impose as an additional
8 condition participation in a drug treatment program.

9 (F) If a defendant on probation at the effective date of this act
10 for a nonviolent drug offense violates that probation a third time
11 either by being arrested for a nonviolent drug possession offense,
12 or by violating a drug-related condition of probation, and the
13 state moves for a third time to revoke probation, the court shall
14 conduct a hearing to determine whether probation shall be
15 revoked. If the alleged probation violation is proved, the
16 defendant is not eligible for continued probation under
17 subdivision (a).

18 (f) The term “drug-related condition of probation” shall
19 include a probationer’s specific drug treatment regimen,
20 employment, vocational training, educational programs,
21 psychological counseling, and family counseling.

22 *SEC. 7. Section 3063.1 of the Penal Code is amended to*
23 *read:*

24 3063.1. Possession of Controlled Substances; Parole;
25 Exceptions

26 (a) Notwithstanding any other provision of law, and except as
27 provided in subdivision (d), parole may not be suspended or
28 revoked for commission of a nonviolent drug possession offense
29 or for violating any drug-related condition of parole.

30 As an additional condition of parole for all such offenses or
31 violations, the Parole Authority shall require participation in and
32 completion of an appropriate drug treatment program. Vocational
33 training, family counseling and literacy training may be imposed
34 as additional parole conditions.

35 The Parole Authority may require any person on parole who
36 commits a nonviolent drug possession offense or violates any
37 drug-related condition of parole, and who is reasonably able to
38 do so, to contribute to the cost of his or her own placement in a
39 drug treatment program.

40 (b) Subdivision (a) does not apply to:

1 (1) Any parolee who has been convicted of one or more
2 serious or violent felonies in violation of subdivision (c) of
3 Section 667.5 or Section 1192.7.

4 (2) Any parolee who, while on parole, commits one or more
5 nonviolent drug possession offenses and is found to have
6 concurrently committed a misdemeanor not related to the use of
7 drugs or any felony.

8 (3) Any parolee who refuses drug treatment as a condition of
9 parole.

10 (c) Within seven days of a finding that the parolee has either
11 committed a nonviolent drug possession offense or violated any
12 drug-related condition of parole, the ~~Parole Authority~~
13 *Department of Corrections Parole Division* shall notify the
14 treatment provider designated to provide drug treatment under
15 subdivision (a). Within 30 days thereafter the treatment provider
16 shall prepare an individualized drug treatment plan and forward
17 it to the Parole Authority and to the ~~California~~ Department of
18 Corrections Parole Division agent responsible for supervising the
19 parolee. On a quarterly basis after the parolee begins drug
20 treatment, the treatment provider shall prepare and forward a
21 progress report on the individual parolee to these entities and
22 individuals.

23 (1) If at any point during the course of drug treatment the
24 treatment provider notifies the ~~Parole Authority~~ *Department of*
25 *Corrections Parole Division* that the parolee is unamenable to the
26 drug treatment provided, but amenable to other drug treatments
27 or related programs, the ~~Parole Authority~~ *Department of*
28 *Corrections Parole Division* may act to modify the terms of
29 parole to ensure that the parolee receives the alternative drug
30 treatment or program.

31 (2) If at any point during the course of drug treatment the
32 treatment provider notifies the ~~Parole Authority~~ *Department of*
33 *Corrections Parole Division* that the parolee is unamenable to the
34 drug treatment provided and all other forms of drug treatment
35 provided pursuant to subdivision (b) of Section 1210 and the
36 amenability factors described in subparagraph (B) of paragraph

37 (3) of subdivision (e) of Section 1210.1, the ~~Parole Authority~~
38 *Department of Corrections Parole Division* may act to revoke
39 parole. At the revocation hearing, parole may be revoked if it is
40 proved that the parolee is unamenable to all drug treatment.

(3) Drug treatment services provided by subdivision (a) as a required condition of parole may not exceed 12 months, ~~provided, however, that additional aftercare services as a condition of parole may be required for up to six months unless the Department of Corrections Parole Division makes a finding supported by the record that the continuation of treatment services beyond 12 months is necessary for drug treatment to be successful. If that finding is made, the Department of Corrections Parole Division may order up to two six-month extensions of treatment services. The provision of treatment services under this act shall not exceed 24 months.~~

(d) Violation of parole.

(1) If parole is revoked pursuant to the provisions of this subdivision, the defendant may be incarcerated pursuant to otherwise applicable law without regard to the provisions of this section. Parole shall be revoked if the parole violation is proved and a preponderance of the evidence establishes that the parolee poses a danger to the safety of others.

(2) Non-drug-related parole violations

If a parolee receives drug treatment under subdivision (a), and during the course of drug treatment violates parole either by committing an offense other than a nonviolent drug possession offense, or by violating a non-drug-related condition of parole, ~~and the Parole Authority~~ *Department of Corrections Parole Division* acts to revoke parole, a hearing shall be conducted to determine whether parole shall be revoked.

Parole may be modified or revoked if the parole violation is proved.

(3) Drug-related parole violations

(A) If a parolee receives drug treatment under subdivision (a), and during the course of drug treatment violates parole either by committing a nonviolent drug possession offense, or a misdemeanor for simple possession or use of drugs or drug paraphernalia, being present where drugs are used, or failure to register as a drug offender, or any activity similar to those listed in paragraph (1) of subdivision (d) of Section 1210, or by violating a drug-related condition of parole, ~~and the Parole Authority~~ *Department of Corrections Parole Division* acts to revoke parole, a hearing shall be conducted to determine whether parole shall be revoked. Parole shall be revoked if the parole

1 violation is proved and a preponderance of the evidence
2 establishes that the parolee poses a danger to the safety of others.
3 If parole is not revoked, the conditions of parole may be
4 intensified to achieve the goals of drug treatment.

5 (B) If a parolee receives drug treatment under subdivision (a),
6 and during the course of drug treatment for the second time
7 violates that parole either by committing a nonviolent drug
8 possession offense, or by violating a drug-related condition of
9 parole, and the ~~Parole Authority~~ *Department of Corrections*
10 *Parole Division* acts for a second time to revoke parole, a hearing
11 shall be conducted to determine whether parole shall be revoked.
12 If the alleged parole violation is proved, the parolee is not
13 eligible for continued parole under any provision of this section
14 and may be reincarcerated.

15 (C) If a parolee already on parole at the effective date of this
16 act violates that parole either by committing a nonviolent drug
17 possession offense, or a misdemeanor for simple possession or
18 use of drugs or drug paraphernalia, being present where drugs are
19 used, or failure to register as a drug offender, or any activity
20 similar to those listed in paragraph (1) of subdivision (d) of
21 Section 1210, or by violating a drug-related condition of parole,
22 and the ~~Parole Authority~~ *Department of Corrections Parole*
23 *Division* acts to revoke parole, a hearing shall be conducted to
24 determine whether parole shall be revoked. Parole shall be
25 revoked if the parole violation is proved and a preponderance of
26 the evidence establishes that the parolee poses a danger to the
27 safety of others. If parole is not revoked, the conditions of parole
28 may be modified to include participation in a drug treatment
29 program as provided in subdivision (a). This paragraph does not
30 apply to any parolee who at the effective date of this act has been
31 convicted of one or more serious or violent felonies in violation
32 of subdivision (c) of Section 667.5 or Section 1192.7.

33 (D) If a parolee already on parole at the effective date of this
34 act violates that parole for the second time either by committing
35 a nonviolent drug possession offense, or by violating a
36 drug-related condition of parole, and the ~~Parole Authority~~
37 *Department of Corrections Parole Division* acts for a second
38 time to revoke parole, a hearing shall be conducted to determine
39 whether parole shall be revoked. If the alleged parole violation is

1 proved, the parolee is not eligible for continued parole under any
2 provision of this section and may be reincarcerated.

3 (e) The term “drug-related condition of parole” shall include a
4 parolee’s specific drug treatment regimen, and, if ordered by the
5 ~~parole authority~~ *Department of Corrections Parole Division*
6 pursuant to this section, employment, vocational training,
7 educational programs, psychological counseling, and family
8 counseling.

9 *SEC. 8. The provisions of this act shall become operative on*
10 *July 1, 2006, and its provisions shall be applied prospectively.*

11 *SEC. 9. The provisions of this act are severable. If any*
12 *provision of this act or its application is held invalid, that*
13 *invalidity shall not affect other provisions or applications that*
14 *can be given effect without the invalid provision or application.*

15 *SEC. 10. The Legislature finds and declares that the*
16 *provisions of this act are consistent with the purposes of the*
17 *Substance Abuse and Crime Prevention Act of 2006.*